

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

IN RE:

TIMOTHY DALE COLLINS,

Debtor.

Case No. 19-30658  
Chapter 7

TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT AGREEMENT

COMES NOW the Chapter 7 Trustee, A. Burton Shuford, and moves this Court as follows:

1. Timothy Dale Collins (the "Debtor"), filed a petition with this Court under Chapter 7 of the Bankruptcy Code on May 16, 2019 thereby creating a bankruptcy estate (the "Estate").
2. A. Burton Shuford is the duly appointed and acting trustee of the Estate (the "Trustee").
3. Among the assets of the Estate is the following parcel of real property (the "Real Property").
  - 2640 Shenandoah Avenue, Charlotte, NC ("Shenandoah):
    - Listing price of Real Estate per Broker's opinion: \$300,000.00;
    - Exemption Claimed by Debtor in Schedule C: \$30,000.00<sup>1</sup>;
    - Approximate amount of Mortgage liens:
      - First Mortgage in favor of Quicken Loans, Inc.: \$178,981.00;
      - Second Mortgage: -None.
4. The records of the Clerk of the Superior Court for Mecklenburg County indicate that the Real Property is also subject to the judgment lien of FM Capital, LLC ("FMC") in the principal amount of \$3,083,150.42 entered in the case of FM Capital, LLC v. Timothy D. Collins, et al. Case No. 18-CVS-2356 (the "Judgment").
5. Based upon the estimated market value of the Real Property; the mortgage liens against the Real Property; the Judgment and other encumbrances against the Real Property exceed the market value of the Real Property.
6. The Handbook for Chapter 7 Trustees published by the Executive Office of the United States Trustee, states on pages 4 – 14 under Section 9 "Sales of Assets" (a) General Standards "A trustee may sell assets only if the sale will result in a meaningful distribution to creditors." The Section further states "the trustee may seek a "carve-out" from a secured creditor and sell the property at issue if the "carve-out" will result in a meaningful distribution to creditors.

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<sup>1</sup> The Trustee has questioned the Debtor's entitlement to this exemption and may object to the same.

Further, the Section states “The trustee must also consider whether the cost of administration or tax consequences of any sale would significantly erode or exhaust the estate’s equity interest in the asset.”

7. The Trustee has entered into negotiations with FMC and reached an agreement as follows:

- a. FMC agrees that the Estate may market the Real Property for sale and will not object to any proposed sale on the grounds that the price at which the Real Property is to be sold is less than the aggregate value of the liens against the Real Property, 11 U.S.C. §363 (f) (3), although FMC may object to a proposed sale on any other basis;
- b. FMC agrees that the Trustee may pay the following expenses and costs of sale for the gross sales proceeds of the Real Property; Commercial Insurance Policy insuring the Real Property (not including the cost of general liability coverage); real estate commission; pro-rated real estate taxes; revenue stamps; valid liens against the Real Property that have priority over the lien of FMC; any capital gains taxes owed by the Estate (collectively the “Sale Expenses”) and the “Net Sale Proceeds” shall equal the Gross Sales Proceeds of the Real Property less the Sale Expenses; and,
- c. The Net Sale Proceeds shall be divided between FMC and the Estate such that FMC shall receive 75% of the Net Sale Proceeds and the Estate shall receive a carve-out of 25% of the Net Sale Proceeds of the Real Property for the benefit of the administrative costs of the Estate and the unsecured creditors of the Estate, which will result in a meaningful distribution to the creditors.

WHEREFORE, the Trustee prays that this Court approve the above agreement between the Trustee and FMC.; and for such other and further relief as the Court determines is appropriate.

This 2<sup>nd</sup> day of August, 2019.

/s/ A. Burton Shuford  
A. Burton Shuford, NCBN 10035  
4700 Lebanon Road, Suite A-2  
Mint Hill, NC 28227  
Direct Dial: (980) 321-7000; [bshuford@abshuford.com](mailto:bshuford@abshuford.com)  
Attorney for the Trustee

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

IN RE:

TIMOTHY DALE COLLINS,

Debtor.

Case No. 19-30658  
Chapter 7

NOTICE OF TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT  
AGREEMENT AND NOTICE OF HEARING

A. Burton Shuford, Trustee, through his attorney, has filed papers with the Court as described above. A copy of this Motion is attached to this Notice. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

A hearing will be held to consider this Motion on **August 26, 2019 at 9:30 AM** at the United States Federal Courthouse, 401 W. Trade Street, Charlotte, North Carolina. No further notice of this hearing will be given.

**All interested parties may attend and be heard. If you do not oppose the Motion you do not have to attend.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the requested relief.

This 2<sup>nd</sup> day of August, 2019.

/s/ A. Burton Shuford  
A. Burton Shuford, NCBN 10035  
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Attorney for the Trustee

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

IN RE:

TIMOTHY DALE COLLINS,

Debtor.

Case No. 19-30658  
Chapter 7

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of by depositing copies of *TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT AGREEMENT* and *NOTICE OF HEARING* by either Electronic Case Filing as indicated below or in the exclusive care and custody of the United States Postal Service, with proper postage thereto affixed, addressed to the parties listed on the attached Exhibit "A".

Shelley K. Abel, US Bankruptcy Administrator

VIA ELECTRONIC CASE FILING

Marcus D. Crow, Counsel for Debtor

VIA ELECTRONIC CASE FILING

Timothy Dale Collins  
2633 Shenandoah Avenue  
Charlotte, NC 28205

Jeffrey A. Long, Esq.  
Bray & Long, PLLC  
Tranquil Court  
2820 Selwyn Avenue, Suite 400  
Charlotte, North Carolina 28209

This 2<sup>nd</sup> day of August, 2019.

/s/ A. Burton Shuford

A. Burton Shuford, NCBN 10035  
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Mint Hill, NC 28227  
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Attorney for the Trustee

~~Label Matrix for local noticing~~  
~~0419-3~~  
~~Case 19-30658~~  
~~Western District of North Carolina~~  
~~Charlotte~~  
~~Thu Aug 1 15:49:30 EDT 2019~~

~~Charlotte Division~~  
~~401 West Trade Street~~  
~~Charlotte, NC 28202-1633~~

ADT Bankruptcy Specialist  
 3190 South Vaughn Way  
 Aurora, CO 80014-3512

American Express  
 P.O. Box 981535  
 El Paso, TX 79998-1535

Atrium Healthcare System  
 P.O. Box 32861  
 Charlotte, NC 28232-2861

Auto Trakk  
 1500 Sycamore Road, Suite 200  
 Montoursville, PA 17754-9416

AutoZone, Inc.  
 c/o Altus GTS, Inc.  
 2400 Veterans Memorial Blvd, Ste.300  
 Kenner, LA 70062-8725

Barclaycard  
 PO Box 8802  
 Wilmington, DE 19899-8802

Blancato, Doughton & Hart, PLLC  
 Attn: Amy L. Bossio, Esq.  
 633 West Fourth Street, Suite 150  
 Winston-Salem, NC 27101-2756

Broad and Cassel  
 100 North Tampa St., Suite 3500  
 Tampa, FL 33602-5869

Citi Card  
 Bankruptcy Department  
 P.O. Box 6062  
 Sioux Falls, SD 57117-6062

Citi Card  
 Bankruptcy Department  
 PO Box 6500  
 Sioux Falls, SD 57117-6500

Coastal Credit, LLC  
 3268 Progress Way, Bldg. 12  
 MSC-5200  
 Wilmington, OH 45177-7700

Consumer Portfolio Services  
 19500 Jamboree Road, Suite 500  
 Irvine, CA 92612-2437

Consumer Portfolio Services  
 PO Box 57071  
 Irvine, CA 92619-7071

Dealer Marketing Services/ProMax  
 c/o McCarthy, Burgess & Wolff  
 26000 Cannon Road  
 Cleveland, OH 44146-1807

Discover Bank  
 Discover Product Inc  
 PO BOX 3025  
 New Albany, OH 43054-3025

(p)DISCOVER FINANCIAL SERVICES LLC  
 PO BOX 3025  
 NEW ALBANY OH 43054-3025

Equifax Credit Inf. Serv., Inc  
 P.O. Box 740241  
 Atlanta, GA 30374-0241

Experian, Inc.  
 P. O. Box 9701  
 Allen, TX 75013-9701

FM Capital, LLC  
 6805 Fairview Road  
 Charlotte, NC 28210-3342

FM Capital, LLC  
 Bray & Long, PLLC  
 Attn: Jeffrey A. Long, Esq.  
 2820 Selwyn Ave., Suite 400  
 Charlotte, NC 28209-2762

GC Services  
 Collection Agency Division  
 6330 Gulfton  
 Houston, TX 77081-1108

Gibraltar Capital Advance, LLC  
 c/o Robbins, Salomon & Patt, LTD.  
 180 N. LaSalle Street, Suite 3300  
 Chicago, IL 60601-2808

Great American Bond Company  
 301 East 4th Street  
 Cincinnati, OH 45202-4278

Headway Capital, LLC  
 175 W. Jackson Blvd., Suite 1000  
 Chicago, IL 60604-2863

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 PO Box 1028  
 Fayetteville, NC 28302-1028

Internal Revenue Service  
 Centralized Insolvency Operations  
 PO Box 7346  
 Philadelphia, PA 19101-7346

Internal Revenue Service  
 P.O. Box 7317  
 Philadelphia, PA 19101-7317

Key Bank  
 4910 Tiedeman Road  
 Mailcode: OH-01-51-0562  
 Brooklyn, OH 44144-2338

Key Bank National Association  
PO Box 94968  
Cleveland, OH 44101-4968

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4592 Ulmerton Road, Suite 200  
Clearwater, FL 33762-4107

Mid-Atlantic Finance Company, Inc.  
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13555 Automobile Boulevard, Suite 300  
Clearwater, FL 33762-3837

Midnight Advance Capital, LLC  
30 Broad Street  
14th Floor, Suite 14108  
New York, NY 10004-2304

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227 West Trade Street  
Charlotte, NC 28202-1675

NC Dept. of Revenue  
Bankruptcy Unit, Dept of Revenue  
PO Box 1168  
Raleigh, NC 27602-1168

Nextgear Capital, Inc.  
1320 City Center Drive, Suite 100  
Carmel, IN 46032-3816

North Carolina Department of Revenue  
Bankruptcy Unit  
P.O. Box 1168  
Raleigh, NC 27602-1168

PMAB, Inc.  
P. O. Box 12150  
Charlotte, NC 28220-2150

Peninsula Yacht Club  
18501 Harbor Light Boulevard  
Cornelius, NC 28031-7628

ProMax Unlimited  
2900 AAA Court  
Bettendorf, IA 52722-3407

Prosper Marketplace, Inc.  
221 Main Street, Suite 300  
San Francisco, CA 94105-1909

Quicken Loans  
Bankruptcy Department  
1050 Woodward Avenue  
Detroit, MI 48226-1906

Regions Bank  
Bankruptcy Department  
PO Box 11007  
Birmingham, AL 35288-0001

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PO Box 31579  
Chicago, IL 60631-0579

Shapiro & Ingle, L.L.P.  
10130 Perimeter Parkway, Ste 400  
Charlotte, NC 28216-0034

Trans Union  
P.O. Box 1000  
Chester, PA 19016-1000

~~U.S. Bankruptcy Administrator Office  
402 W. Trade Street  
Suite 200  
Charlotte, NC 28202-1673~~

United Auto Credit Corp.  
PO Box 277536  
Sacramento, CA 95827-7536

United Auto Credit Corporation  
Attn: Michael S. Schulze, Esq.  
1071 Bamelback St., Suite 100  
Newport Beach, CA 92660-3046

Urgent Care/Ballantyne  
PO Box 70826  
Charlotte, NC 28272-0826

Wellen Capital  
f/d/b/a Gibraltar Capital Advance  
600 W Jackson Blvd Suite 750  
Chicago, IL 60661-5683

Wells Fargo Bank  
National Recovery Center  
PO Box 25341  
Santa Ana, CA 92799-5341

Wells Fargo Bank  
PO Box 31557  
Billings, MT 59107-1557

Wells Fargo Dealer Services  
Attn: Correspond MAC T9017-026  
P.O. Box 168048  
Irving, TX 75016-8048

Wells Fargo Dealer Services  
PO Box 10700  
Raleigh, NC 27605

Wells Fargo Home Mortgage, Inc.  
PO Box 10335  
Des Moines, IA 50306-0335

Wise F&I, LLC/ GAPWise  
1670 Fenpark Drive  
Fenton, MO 63026-2918

Yellowstone Capital LLC  
One Evertrust Plaza, Suite 1401  
Jersey City, NJ 07302-3087

Zeichner Ellman & Krause, LLP/ TD Bank  
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~~Marcus D Crow  
The Crow Law Firm  
315-B North Main Street  
Monroe, NC 28112-4727~~

~~Timothy Dale Collins  
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Charlotte, NC 28205-6122~~

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Discover Card  
PO Box 30943  
Salt Lake City, UT 84130

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Quicken Loans Inc.

(u)Wells Fargo Bank, N.A.,

(u)Brian T. Bain  
Keller Williams Realty

End of Label Matrix  
Mailable recipients 68  
Bypassed recipients 3  
Total 71